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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

1201 Elm STREET, SUITE 1000
DALLAS, TEXAS 75201-6831

January 7, 2022

OCR Ref: 06211349

Dr. René Gutiérrez, Superintendent
Brownsville Independent School District
1900 Price Road
Brownsville, TX 78521

Via email (rene.gutierrez@bisd.us)

Dear Dr. Gutiérrez:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint, received in our office on April 19, 2021, filed against the Brownsville Independent School District (the District), in Brownsville, Texas. The Complainant alleged that the District is discriminating on the basis of sex by failing to provide equal athletic opportunities to participants in the Hanna Early College High School (the School) girls' athletics program. Additionally, the Complainant alleged that the District is discriminating against students with disabilities.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department (recipients), or an agency that has delegated investigative authority to this Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulation at 34 C.F.R. Part 104; and Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation, at 34 C.F.R. Part 106. Section 504 prohibits discrimination on the basis of disability and Title IX prohibits discrimination on the basis of sex. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulations at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The District is a recipient and a public entity. Therefore, OCR has jurisdiction to process this complaint for resolution.

OCR opened the following legal issues for investigation:

1. Whether the BISD is failing to provide equal athletic opportunity to female students in interscholastic athletics at Hanna ECHS regarding the provision of locker rooms, practice and competitive facilities, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.41(c); and
2. Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the BISD because the softball field at Hanna
The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

ECHS does not have sufficient accessible audience-member seating, in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151, respectively.

During the investigation to date, OCR reviewed information provided by you and the District and conducted preliminary interviews with you and District Staff. Regarding issue 1 above, OCR's preliminary review of the information provided by the District indicates softball was not a University Interscholastic League (UIL) sport when the School was constructed in 1966. The District reported that the softball field was constructed in 1999 to mirror the baseball field. The District indicated that the baseball field's concession stand and ticket booth were part of its original construction. The District confirmed the softball field does not have a press box or concession stand. Additionally, the District provided OCR with repeated work orders to fix bleachers for the softball team that were not completed due to lack of funds. OCR's preliminary review of the information submitted reflects a concern that a substantial disparity between male and female athletic programs at Hanna ECHS may exist regarding locker rooms, practice and competitive facilities.

Regarding issue 2 above, the District's data response indicates the softball field was constructed in 1999. OCR's preliminary review indicates the applicable accessibility standards are the Uniform Federal Accessibility Standards (UFAS) or 1991 Americans with Disabilities Act Guidelines (1991 Standards). UFAS requires wheelchair locations adjoin an accessible route and be located to provide lines of sight comparable to those of all viewing areas. UFAS also requires at least three wheelchair locations for assembly spaces with a capacity of 50 to 75 and an increased number of wheelchair locations for larger seating capacities. The 1991 Standards require wheelchair locations have at least one companion fixed seat provided next to each wheelchair seating area. For the number of wheelchair locations, the 1991 Standards require 1 for a capacity of 4 to 25, 2 for a capacity of 26 to 50, and 4 for a capacity of 51 to 300. The District provided OCR a satellite map image of the softball field indicating there are only two wheelchair seating areas near the bleachers. OCR's preliminary review reflects a concern that the softball field at Hanna ECHS may lack proper accessible audience-member seating.

Prior to the conclusion of OCR's investigation, the District informed OCR that it was interested in resolving the complaint. Section 302 of OCR's Case Processing Manual provides that a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. The provisions of the resulting resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. OCR approved the District's request to resolve the complaint.

The District voluntarily signed the enclosed resolution agreement (Agreement) on January 6, 2022. OCR determined the Agreement addresses and, when fully implemented, resolves the issues under investigation. Thus, OCR is closing the investigation of this complaint as of the date of this letter. However, OCR will monitor implementation of the Agreement. If the District fails to implement the Agreement, OCR will resume investigative activities.

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This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. You may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that the recipient may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter, please contact Brian Aurelio, the attorney assigned to investigate your complaint, at (214) 661-9661, or by e-mail at Brian.Aurelio@ed.gov. You may also contact me at 214-661-9648 or by e-mail at Timothy.Caum@ed.gov.

Sincerely,

For: Timothy D. Caum
Supervisory Attorney/Team Leader
OCR, Dallas Office